

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL M. MALONE,

Defendant.

**8:12CR190**

**ORDER**

This matter is before the court on the defendant's motion for reconsideration, Filing No. [79](#). The defendant raises claims regarding his sentencing and ineffective representation during his sentencing. However, the defendant has also filed an appeal to the Eighth Circuit Court of Appeals. Filing No. [78](#). The motion for reconsideration addresses the same issues set forth in the appeal. Accordingly, the court has no jurisdiction to hear the motion for reconsideration.

In the alternative, if the court has jurisdiction to reconsider this sentence, the court would deny the same. Defendant relies on Fed. R. Crim. P. 35 and 36, arguing that this court should correct the sentence which results from arithmetical, technical or other clear error. Also, the defendant relies on Fed. R. Civ. P. 59(3) and 60(b) which allows for a motion to reconsider for mistake, surprise, excusable neglect, or inadvertence, as well as other mistakes. However, the defendant does not raise any issues that fall within the ambit of these rules. On the contrary, the defendant argues about testimony by CID Agent Evan Carpenter during his sentencing that he construes as unfair surprise. The court heard the evidence at sentencing and made its rulings

based on the testimony received. The defendant's other arguments regarding ineffective assistance of counsel are not appropriately brought in this motion.

THEREFORE, IT IS ORDERED that the defendant's motion for reconsideration, Filing No. [79](#), is denied for the reasons set forth herein.

Dated this 16th day of September, 2013.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge